

Audit Procedures for Utilities Gross Receipts Tax

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Disclaimer: This manual has been written for the purposes of a training tool and as a reference guide for the auditor. Any references to taxability, administrative policies, laws, and rules are subject to change due to administrative hearings and actions of the courts or legislature. While the content of the manual is current as of the revision date, the reader is responsible for any changes occurring after this date and should verify the current status of any information by contacting the Comptroller of Public Accounts toll free at 1-800-252-5555.

Chapter 1

Introduction

Introduction

This audit manual includes information for conducting Miscellaneous Gross Receipts tax audits on electric, gas, and water utilities in Texas, and Public Utility Gross Receipts Assessment audits on electric utilities. These are the two taxes levied on the gross receipts of these utilities and administered by the State Comptroller:

Chapter	Tax Type	Tax	Applies to Electric Utilities	Applies to Gas Utilities	Applies to Water Utilities
2	47	Public Utility Commission Gross Receipts Assessment	Yes	No	No
3	23	Miscellaneous Gross Receipts Taxes	Yes	Yes	Yes

The Public Utility Regulatory Act (PURA) was first enacted in Texas in 1975. That Act established the Public Utility Commission of Texas (PUC) and imposed a gross receipts assessment on electric, telephone and water companies. In 1985 regulatory jurisdiction over water utilities was transferred to the Texas Water Commission.

Regulatory jurisdiction over electric utilities and telephone utilities providing service in Texas remains under the control of the PUC. These utilities send reports and payments for the assessment to the Comptroller. Chapter 2 of this manual discusses the PUC Gross Receipts Assessment as it applies to electric utilities. **For information on the PUC Gross Receipts Assessment as it applies to telecommunications, refer to the Telecommunications Taxes Audit Manual.**

The Miscellaneous Gross Receipts Tax was codified into Chapter 182 of the Tax Code in 1981, and originally applied to electric, gas, water, and telephone companies. The tax on telephone utilities was later repealed, but remains applicable to electric, gas, and water utilities. This tax on Miscellaneous Gross Receipts Tax is described in Chapter 3 of this audit manual.

Electricity Utility Deregulation

In 1999, the Texas Legislature enacted Senate Bill 7 with the goal of providing retail customers with electric service at lower rates. To accomplish this goal, the bill required the introduction of competition in most parts of the state by January 1, 2002. The first step in the move to competition was to restructure the electric industry. Under Senate Bill 7, the existing monopoly (integrated) utility companies were required to separate their business activities into three units: a power generation company (PGC), a transmission and distribution utility (TDU), and a retail electric provider (REP). Each of these entities is described below. To accomplish the business separation, the integrated utilities could either create separate nonaffiliated companies, create separate affiliated companies owned by a common holding company, or sell assets to a third party. In addition to the unbundling requirements, affiliated retail electric providers were required to establish a “price to beat” for the sale of electricity to residential and small commercial customers. The price to beat, which was originally set at six percent less than the bundled rate charged by the integrated utility on January 1, 1999, served as a benchmark that allowed competitive retailers to enter the retail electric market and attract customers with rates that were lower than those offered by the affiliated REPs. The price to beat requirement expired on January 1, 2007. After that date, the rates of the affiliated REPs were no longer regulated by the PUC.

Power Generation Company (PGC)

an entity that generates electricity that is intended to be sold at wholesale. A PGC does not own a transmission and distribution system in Texas and does not have a certificated service area.

Retail Electric Provider (REP)

an entity that purchases electricity at wholesale and sells that electricity to retail customers in Texas. A REP is also responsible for buying and paying for transmission and distribution service, billing and collecting payments from its customers, and providing customer service. A REP may not own or operate generation assets.

Transmission and Distribution Utility (TDU)

a person or river authority that owns or operates for compensation in this state equipment or facilities to transmit or distribute electricity. These companies, known as “local wires companies,” still operate as monopolies in their service areas. The term “transmission and distribution utility” does not include a municipally owned utility or an electric cooperative. A TDU may be a single utility or may be separate transmission and distribution utilities. The price that a TDU may charge for its services must be approved by the Public Utility Commission in a ratemaking proceeding. The TDUs tariff includes “nonbypassable delivery charges” for transmission and distribution service by customer class, as well as the rates for any system benefit fund fees, expected competition transition charges, municipal franchise charges, and transition charges, if any. These rates are set out as Riders under the Rate Schedules approved in the utilities’ tariffs.

The TDUs bill to the REP may or may not contain separate amounts for transmission and distribution services, system benefit fund fees, competition transition charges, municipal franchise fees, nuclear decommissioning fees, and transition charges.

The REP then charges its customers for customer service, the electric energy, and transmission and distribution service which usually includes the cost of system benefit fund fees, competition transition charges, municipal franchise fees, nuclear decommission fees, and transition charges, if any. Competitive REPs may also include separate charges for reimbursement of their PUC assessment and miscellaneous gross receipts tax liabilities.

Chapter 2

Public Utility Gross Receipts Assessment

Introduction

The Public Utility Commission assessment is described in Chapter 16 of the Utilities Code. The assessment applies to both telecommunications and electric utilities. This manual discusses the PUC Assessment only as it pertains to electric utilities. **For information on the PUC Assessment on telecommunications, refer to the Telecommunications Taxes audit manual.**

The PUC assessment is imposed on the electric utility company, not the ultimate consumer or customer. The statute does not provide any exemptions from the assessment, so the utility company should pay the assessment on rates charged all its customers regardless of type (commercial, residential, governmental, exempt organizations, etc.) The utility company may collect a reimbursement of the assessment from the customer if it is a separate line item on the customer's billing labeled "utility gross receipts assessment reimbursement." If this reimbursement is collected from the customer, it is to be included in the utility's gross receipts that are subject to the assessment.

The Utilities Code includes all the provisions for regulation of the electric and telecommunications industries. Chapter 11 includes definitions, Chapter 16 provides for the assessment, and Chapters 31-43 govern electric utilities. Chapter 39 governs deregulation of the retail electric industry.

Statutory Assessment

The statutory authority for the Public Utility Commission Gross Receipts Assessment (PUC Gross Receipts Assessment) comes from the Utilities Code, Chapter 16.

Chapter 16. Commission Financing

Subchapter A. Assessment on Public Utilities

- (A) To defray the expenses incurred in the administration of this title, an assessment is imposed on each public utility, retail electric provider, and electric cooperative within the jurisdiction of the commission that serves the ultimate consumer, including each interexchange telecommunications carrier.
- (B) An assessment under this section is equal to one-sixth of one percent of the public utility's, retail electric provider's, or electric cooperative's gross receipts from rates charged to the ultimate consumer in this state.
- (C) An interexchange telecommunications carrier that does not provide local exchange telephone service may collect the fee imposed under this section as an additional item separately stated on the customer bill as "utility gross receipts assessment."

Sec. 16.002. Payment Dates

- (A) The assessment is due August 15.
- (B) A public utility may instead make quarterly payments due August 15, November 15, February 15, and May 15.

Sec. 16.003. Late Payment Penalty.

- (A) An additional fee equal to 10 percent of the amount due shall be assessed for any late payment of an assessment required under this subchapter.
- (B) An assessment delinquent for more than 30 days accrues interest at an annual rate of 12 percent on the amount of the assessment and penalty due.

Sec. 16.004. Collection by Comptroller.

The comptroller shall collect the assessment and any penalty or interest due under this subchapter.

General Information

Tax Type: 47

Statute: Utilities Code, Title 2, Public Utility Regulatory Act

Rule: [Rule 3.511. Tax Rate, Due Dates, Payments, Exclusions, and Auditing](#)

Assessment Rate: One-sixth of one percent of gross receipts from rates charged the ultimate consumer in Texas = (.001667 of taxable receipts).

Penalty: 10% of the assessment, levied on the **first day** after the due date.

Interest: **12% per annum, on the amount of the assessment plus penalty, beginning 31 days after the due date.** (Fluctuating interest rates and credit interest provisions do not apply.)

Due Dates: Annual assessment covers July 1 through June 30 of each year and is due on or before August 15. Quarterly payments may be elected by the taxpayer, in writing, and must be received by the Comptroller at least 30 days prior to August 15. If an election is made, the assessment covers calendar quarters, with reports due on May 15, August 15, November 15 and February 15.

Reported Data: All returns and reports are sent to the Comptroller from the utility companies, using Form [#20-106](#). The reported data is maintained manually and is not accessible via the mainframe. To obtain information on reported figures, contact Revenue Accounting, Miscellaneous Tax Section, at (512) 463-4276.

Statute of Limitations: General Provisions of the Tax Code apply, and Section 111.201 imposes the 4 year statute of limitations. In an audit of the PUC Gross Receipts Assessment, an Agreement to Extend Period of Limitation should be obtained as necessary. For “Type of Tax” use “Public Utility Gross Receipts Assessment, Utilities Code, Title 2.”

Taxpayer History: There is no computer inquiry nor taxpayer history available for the PUC Assessment. Contact Revenue Accounting for reported data. (See Reported Data above).

Audit Write-up: The audit should be completed under Tax Type 47, always as an annual filer, covering the period July 1 through June 30 of each year in which the taxpayer was in business. Send the audit to the RPC for review. Include an Audit Adjustment Report for all audit adjustments. In the audit cover letter, refer to this as the “PUC Gross Receipts Assessment.”

Audit Exams: Schedules should be prepared to fit the situation. The auditor should use judgment in determining how the adjustments can be best displayed given the particular circumstance.

Definitions

There are several important electric industry definitions used in the Utilities Code, Section 31.002, that must be used in interpreting the statute:

(6)“**Electric utility**” means a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with Subchapter C, Chapter 184, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

- (A) a municipal corporation
- (B) a qualifying facility;
- (C) a power generation company;
- (D) an exempt wholesale generator;
- (E) a power marketer;
- (F) a corporation described by Section 32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer;

- (G) an electric cooperative;
 - (H) a retail electric provider;
 - (I) this state or an agency of this state; or
 - (J) a person not otherwise an electric utility who:
 - (i) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;
 - (ii) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or
 - (iii) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Subchapter C, Chapter 184.
- (15) **“Rate”** includes a compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by an electric utility for a service, product, or commodity described in the definition of electric utility in this section and a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification that must be approved by a regulatory authority.
- (16) **“Retail customer”** means the separately metered end-use customer who purchases and ultimately consumes electricity.
- (17) **“Retail electric provider”** means a person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets.

Subject Taxpayers

Section 16.001, subsection (a) says “an assessment is imposed on each”

- Utility or Public utility, as defined by Section 11.004 means an electric utility, as that term is defined by Section 31.002 as a person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state.
- Retail electric provider, as defined by Section 31.002 (17), and
- Electric cooperative, as defined by Section 11.003 (9) = Electric cooperative” means:
 - a corporation organized under Chapter 161 or a predecessor statute to Chapter 161 and operating under that chapter; or
 - a corporation organized as an electric cooperative in a state other than Texas that has obtained a certificate of authority to conduct affairs in the State of Texas

Taxpayers **excluded** from assessment base:

- Municipal corporations
- Qualifying facility or exempt wholesale generator
- Power marketer
- Transmission and distribution utility (TDU)
- Power generation company (PGC)

Jurisdiction

Chapter 16.001, subsection (a) also says these taxpayers must be under the jurisdiction of the commission. Jurisdiction is defined in Chapter 32 for electric utilities:

- Section 32.001 for electric utilities states that the Commission has jurisdiction over each public utility, retail electric provider, and electric cooperative in: (1) areas outside a Texas municipality; and (2) areas inside a Texas municipality that surrenders its jurisdiction to the commission under Section 33.002.
- The Commission does not have jurisdiction over (1) municipally owned utilities, or (2) a River Authority operating a steam generating plant for generation and sale of electricity at wholesale, not to the ultimate consumer.

Gross Receipts and Rates

Chapter 16.001, subsection (b), says “an assessment under this section is equal to one-sixth of one percent of the public utility’s **gross receipts** from **rates** charged to the ultimate consumer in this state.”

- **Gross Receipts:** includes receipts from charges for services, products, or commodities that are supplied or sold to an **ultimate consumer**. This does **not** include receipts derived from the sale of products or services that will be resold by the purchaser.
- **Rate** includes:
 - (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed, charged, or collected by a public utility for a service, product, or commodity described in the definition of utility in Section 51.002; and
 - (B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification. (Section 11.003, subsection (16))
- **Service:**

“Service” has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility’s duties under this title to its patrons, employees, other public utilities, an electric cooperative, and the public. The term also includes the interchange of facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory. (Section 11.003, subsection 19)

Taxable Receipts

(references italicized in parentheses refer to documents on STARS)

1. Residential/general sales
2. Commercial and industrial sales
3. Receipts from governmental entities (public sales)
4. Charges for transmission and distribution services ([200107391L](#))
5. Competition transition charges ([200107391L](#))
6. Late penalties and forfeited customer deposits ([200204035L](#))
7. Returned check charges
8. Charges for security lights
9. Field collection charges
10. Customer connect, disconnect, re-connect fees
11. Account initiation fees, new or existing service
12. Master metered apartment collection letters
13. Service charges for overhead costs ([200204035L](#))
14. Minimum billing charges ([200204035L](#))
15. Interest earned on security deposits ([200204035L](#))
16. Charges for energy pulse
17. Charges for meter tests
18. Charges for load reports
19. Charges for out-of-cycle meter readings
20. Temporary service charges
21. Service diversion fees
22. Bad debt recoveries on previously deducted taxable receipts
23. Charges for statements of electric usage
24. Charges for special billings
25. Municipal franchise fees and other reimbursements from customers for charges paid to a city ([200107391L](#)), ([200201770L](#))
26. Taxes or assessments levied on a utility which are passed on to the customers ([200204035L](#)), ([9601886L](#)), ([200210502L](#))
27. Receipts from city for furnishing street lighting

28. Rental of substations to large industrial consumers (ultimate consumers)
29. Receipts from the Bill Payment Assistance Program for reimbursement of discounted rates for low-income electric customers

Nontaxable Receipts

1. Rent from electric property (realty)
2. Bad debts of taxable receipts written off for federal income tax purposes
3. Taxes levied on customers which are collected by the utility company as agent for the taxing authority, i.e., sales tax ([200204035L](#))
4. Sales for resale ([9705884L](#)), ([200202829L](#)), ([200404580L](#))
5. Electricity generated by the company for the company's own use ([200404580L](#))
6. Miscellaneous revenues not related to the provision of utility service, i.e., financial/legal services, interest, dividends
7. Interdepartment sales between departments or divisions of the utility itself
8. System benefit fund fees ([200107391L](#))
9. Nuclear decommission fees ([200107391L](#))
10. Transition charges ([200107391L](#))
11. Other electric revenues which are not received from the ultimate consumer

Chapter 3

Miscellaneous Gross Receipts Tax (Electricity, Gas, Water)

Introduction

The Miscellaneous Gross Receipts Tax is described in the Tax Code, Chapter 182. The gross receipts tax applies to electric, gas, and water utilities. The Miscellaneous Gross Receipts tax was recodified into the Tax Code in 1981, and at that time it also applied to telegraph and telephone companies. The gross receipts tax on telephone and telegraph was later repealed, and now applies only to the electric, gas, and water utilities.

The gross receipts tax applies only to gross receipts from business done inside an incorporated town or city, and the tax rate increases based on population. The tax is considered an occupation tax, and is allocated to the foundation school fund and the general revenue fund. (*Tax Code, Sec. 182.121, 182.122*)

Statutes

Texas Tax Code Ann. Chapter 182 describes the miscellaneous occupation taxes based on the gross receipts from operations.

Subchapter A describes telegraph companies

This section was repealed October 1, 1985, and will not be discussed in this manual.

Subchapter B describes utility companies.

This section is described in Chapter 3 of this manual.

General Information

Tax Type: 23

Statute: [Miscellaneous Gross Receipts Tax, Tax Code, Chapter 182, Subchapter B](#)

Rule: [Rule 3.52, Miscellaneous Taxes Based on Gross Receipts, Concerns Exempt from Tax](#)

Tax Rate: 3 rates depending upon population of city in which receipts are derived. See "[Tax Rates](#)."

Due Dates: reports are due quarterly, on the last day of the month following the calendar quarter

Reported Data: Taxpayer reports their quarterly gross receipts on [Form #20-103](#). First Reports are submitted using [Form #20-100](#). Reported data is available on mainframe inquiry using tax type 23. Copies of taxpayer returns are available through the FileNet Imaging System.

Statute of Limitations: 4 year statute of limitations (Tax Code, Sec. 111.201). For tax type, use "Miscellaneous Gross Receipts Tax, Tax Code, Chapter 182."

Taxpayer History: a "taxpayer history" is available using inquiry XIRPTS, tax type 23

Audit Write-up: all audits generated in Work Manager will be under Tax Type 23. In the cover letter, refer to this tax as the "Miscellaneous Gross Receipts Tax." An Audit Adjustment Report for non-automated taxes must be completed.

Audit Exams: Schedules should be prepared to fit the situation. The auditor should use judgment in determining how the adjustments can be best displayed given the particular circumstance. Always use the notations "**Quarter Ending**" for report periods. If the taxpayer began business during the audit period, the beginning period should be noted as "**First Report**."

Definitions

Tax Code, Chapter 182, only provides two definitions:

182.021. DEFINITIONS. In this subchapter:

1. **“Utility company”** means a person:
 - (A) who owns or operates a gas or water works, or water plant used for local sale and distribution located within an incorporated city or town in this state; or
 - (B) who owns or operates an electric light or electric power works, or light plant used for local sale and distribution located within an incorporated city or town in this state, or who is a retail electric provider, as that term is defined in Section 31.002, Utilities Code, that makes local sales within an incorporated city or town in this state; provided, however, that a person who owns an electric light or electric power or gas plant used for distribution but who does not make retail sales to the ultimate consumer within an incorporated city or town in this state is not included in this definition.
2. **“Business”** means the providing of gas, electric light, electric power, or water.

Subject Taxpayers

Based on Section 182.021, a “utility company” includes the following for local sale and distribution located within an incorporated city or town in this state:

- a gas, or water works, or water plant
- an electric light or electric power works, or light plant
- a retail electric provider, as defined in Section 31.002 of the Utilities Code

The definition does not include a plant or utility used for distribution but who does not make retail sales to the ultimate consumer within an incorporated city or town in this state.

Nontaxable Utilities

The following types of utilities are exempt from taxation under the Miscellaneous Gross Receipts Tax:

- A plant or utility used for distribution but who does not make retail sales to the ultimate consumer within an incorporated city or town in this state. (*Tax Code, Sec. 182.021*)
- **Municipal utilities:** Any utility owned and operated by any city or town, county, water improvement district or conservation district. (*Tax Code, Sec. 182.026*)
- **Co-ops:** A utility organized under the “Electric Cooperative Corporation Act” is exempt. (*Miscellaneous Tax Rule. 3.52*)
- **Single customer gas utilities:** A gas pipeline company which sells to only one industrial consumer is exempt. [*Utilities National Gas Co. v. State, 133, Texas 313, 128S.W.2d 1153 (1939), and Attorney General Opinions #V-994, #0-3776 dated August 1, 1941, and #V- 1084 dated August 17, 1950.*]

Permits

Every person, company, etc. engaged in business in Texas which has to pay a tax on gross receipts is required to have a permit to transact business. Currently, this means that all utility companies doing business in Texas must have a Gross Receipts Permit, which has to be renewed each year. There is no fee required for the permit, but the company must apply to Revenue Accounting for the permit annually. (*Tax Code, Sec. 182.086*)

First Report

Any utility company, which begins transacting business in Texas on or after the first day of the quarter, must file a special Gross Receipts Tax Report for business started on or after the beginning of the quarter. The due date is considered to be the first day of business in Texas.

This first report is submitted on [Form #20-100](#), which includes a certification on the type of business conducted and the date the business began. With this first report, the tax is a fixed sum of fifty dollars (\$50.00) **payable in advance**. (*Tax Code, Sec. 182.083*)

Quarterly Reports

Every utility company which has to pay the Miscellaneous Gross Receipts Tax must file reports with the Comptroller quarterly on the last day of January, April, July, and October of each year. (*Tax Code, Sec. 182.081, 182.082*)

The comptroller may require a person required to report under this chapter to supply additional or supplemental reports containing information necessary to compute the tax due. (*Tax Code, Sec. 182.084*)

If a person that begins business on or after the first day of the quarter is an incorporation, reincorporation, or survivor of a merger of a person or persons that were previously subject to a tax under this chapter, its report required under Section 182.081 of this code must show the combined gross receipts during the preceding quarterly period of the person or persons that were incorporated, reincorporated, or merged to form the new entity. The gross receipts tax provided for in this chapter must be paid on the reported combined gross receipts required under this subsection. (*Tax Code, Section 182.083*)

Quarterly gross receipts are reported using [Form #20-103](#). The form has three sections, one for reporting gross receipts on gas, one for electricity, and one for water. Each section has three lines for the separation of gross receipts by population.

If a taxpayer is operating two, or all three of these utilities, the report form should have the gross receipts listed for each section.

If the taxpayer is operating in multiple cities, the receipts from business in each city must be allocated by population. For example, if all cities in which the utility is operating have populations of 10,000 or more, then all receipts will be listed on the line “over 9,999.” If they are conducting business in smaller towns, then the gross receipts must be appropriately listed on the line for that city’s population. The population is determined by the most recent federal census. The 1990 and 2000 Federal Census population tables are included in Appendix A.

Payment Action

For the Miscellaneous Gross Receipts tax, the payment is actually made in advance for a future period, but is based upon and calculated upon business done in a prior period.

For example, a company pays \$50.00 for the first quarter in which business is transacted, which is due at the first day of business. The \$50.00 payment is to cover the first quarter in advance. The next payment is then made at the end of the first quarter and is the payment for the second quarter in advance, but is based on and calculated upon the business done in the first quarter. This system continues until the company goes out of business, and if the company does go out of business **during** a quarter, a tax return is **not** required to be filed at the end of that last quarter.

For example, a company begins business on January 15, 2005, and goes out of business on October 20, 2005.

Period	Due Date	Amount	Pays for Qtr
First Report (first day of business is 1-15-2005)	1-15-05	\$50.00	051
QE 3-31-05	4-30-05	Calculated on receipts from 1-15-05 through 3-31-05	052
QE 6-30-05	7-31-05	Calculated on receipts from 4-1-05 through 6-30-05	053
QE 9-30-05	10-31-05	Calculated on receipts from 7-1-05 through 9-30-05	054
QE 12-31-05 (company goes out of business on 10-20-05)	n/a	n/a	n/a

NOTE: Audit schedules should use “First Report” and “Quarter Ending” for report periods.

Tax Rates

A tax is imposed on each utility company located in an incorporated city or town having a population of more than 1,000 according to the last federal census preceding the filing of the report. (*Tax Code, Sec. 182.022*)

The tax rate is determined by the population of the city in which the gross receipts are derived. If a utility is providing service in more than one city, the tax rate applies according to the gross receipts derived in each city and the population of each city.

Population:*	Tax Rate
Incorporated areas of more than 1,000 but less than 2,500 population	00581
Incorporated areas of 2,500 or more but less than 10,000 population	01070
Incorporated areas of 10,000 or more population	01997

*The population figures for the 1990 and 2000 Federal census are included in Appendix A. This classification remains unchanged until the publication of the next federal census even if their actual population increases or declines subsequent to the last federal census.

The publication of the federal census is always delayed for some time after the end of the year for which it is taken. The 2000 federal census population figures should be applied to all quarterly report periods beginning July 1, 2001. [200109170L](#)

Only one utility company pays the tax on a commodity. If the commodity is produced by one utility company and distributed by another, the distributor pays the tax. (*Tax Code, Sec. 182.023*)

Newly Annexed Areas

When a rural area is annexed by an incorporated city, the newly annexed area comes under the provisions of the Miscellaneous Gross Receipts tax law **as of the date of annexation** since such an area is within the annexing city as of that date. [8112912H](#)

Penalties

There are some penalties imposed by the statute on miscellaneous gross receipts taxes:

- Penalty for failure to pay the tax due under the statute: If anyone fails to pay the tax by the due date, a penalty of 5 percent of the tax will be imposed, and after 30 days an additional penalty of 5 percent of the tax will be imposed, for a total of 10 percent. The minimum penalty is \$1 per period. (*Tax Code, Section 108.102*)
- Audits may include an additional penalty of 50% if approved by the Manager of Audit Division. (*Tax Code, Section 111.061(b)*.)
- Tex. Tax Code Ann. Ch. 182, Sec. 182.104 imposes a penalty of \$50.00 to \$500.00 daily for each day's business that is transacted in violation of Chapter 182, when a permit has not been obtained or has been suspended. This is a civil penalty that should only be assessed by a court of competent jurisdiction. [*See Tex. Atty. Gen. Op. No. MW-19 (1979)*].

Taxable Receipts

Taxable receipts for Miscellaneous Gross Receipts include the following:

- Charges for providing gas, electricity, and water to residential, commercial, governmental and industrial customers
- Transmission and distribution services [200107391L](#)
- Competition transition charges [200107391L](#)
- Late Penalties and forfeited discounts: if the customer billing shows an amount for a late payment penalty or a forfeited discount, it is taxable. [200204035L](#)

- Forfeited customer deposits: any amount required to be deposited for utility service which is later forfeited by the customer is taxable when transferred to an income account.
- Charges for the sale of wastewater
- Guard/security lights: electric or gas lights which are charged to the customer on a flat rate per month for the appliance and the power to run the appliance are taxable.
- Bad debt recoveries of taxable receipts previously deducted
- Charges for meter tests
- Charges for load reports
- Charges for out-of-cycle meter reading
- Charges for statements of electric usage
- Charges for special billings
- Charges for energy pulse
- Charge for reading a meter due to a change in the billable party [200207291L](#)
- Service charges for overhead costs [200204035L](#), [200201770L](#)
- Minimum billing charges [200204035L](#)
- Interest earned on security deposits [200204035L](#)
- Delinquent notification charge, a charge for a company employee to go to a customer's residence or place of business in order to leave a notice that service is to be terminated for failure to pay delinquent amounts owed for gas service previously rendered. [200207291L](#)
- Municipal franchise fees and other reimbursements from customers for charges paid to a city [200107391L](#), [200201770L](#)
- Taxes or assessments levied on a utility which are passed on to the customers [200204035L](#)

Nontaxable Receipts

Nontaxable items for the Miscellaneous Gross Receipts Tax include:

- Charges for utility service outside the city limits
- Sales for resale: if a commodity is produced by one utility company and distributed by another, the distributor pays the tax. The sale to the distributor is not taxable. *[TEX. TAX CODE ANN., Chap. 182, Section 182.003.]*
- Interdepartmental sales between departments or divisions of the utility itself
- Connect, disconnect, and reconnect charges [200207291L](#), [200205251P](#)
- Garbage collection
- Sewer treatment/disposal
- Sales taxes collected on the sale of the utility [200204035L](#)
- Money collected under a Bill Payment Assistance Program [200204035L](#)
- Returned check charges for reasons of non-sufficient funds, account closed, payment withheld, invalid signature, or improper preparation. [200207291L](#)
- Fees charged to natural gas distribution companies and master operators by the Railroad Commission to cover the cost of the Commission's pipeline safety program. ([Utilities Code, Section 121.211\(g\)](#), effective 09/01/03)
- System benefit fund fees [200107391L](#)
- Nuclear decommission fees [200107391L](#)
- Transition charges [200107391L](#)
- Sale of electricity generated by an advanced clean energy project as defined by Health & Safety Code, Section 382.003 (see [House Bill 3732](#), 80th Regular Session, 2007). *Effective 9-1-2007.*

Chapter 4

Audit Information

Records to be Examined

Generally, for an electric utility, the same records can be used to audit for both the Miscellaneous Gross Receipts Tax (MGRT) and the PUC Gross Receipts Assessment

The taxable receipts for electric utilities for the PUC Assessment include more items than are taxable for the MGRT. For example, the PUC Assessment applies to receipts in unincorporated areas of the state, while the MGRT is limited to incorporated areas.

The PUC Assessment does not apply to the gas or water utilities.

To audit for any electric, gas, or water utility, the records to be examined generally consist of:

- **Work orders** These are the initial records used when a customer is first placed on service. The work orders will assist in determining the first business activity, and may be necessary to determine the physical location of the meter.
- **Meter records** These are the records that indicate the meter location history and are identifiable by meter number. It may be necessary to use these records if customer billings only indicate meter number and not meter location. The meter location is necessary information for proper application of the MGRT.
- **Customer billings** These are the monthly billings to the utility company's customers and are the source documents for most revenue accounts. The customer billings may also include nontaxable revenues such as garbage collection, service connection fees, etc. Customer addresses should not be used as absolute indicators for location of service since the billing address and service address may not be the same.
- **Billing summaries** These are the monthly summaries that are divided into residential and commercial customers, and also may be divided into billing cycles to correspond with the method used to bill customers (i.e., customers billed by meter read dates, alphabetically, or areas, etc.).
- **General ledgers and/or subsidiary ledgers** These are the summary records of account details including billing summaries.
- **Reports to cities for payment of street/alley use** Some cities may charge a utility company a fee based on receipts for the use of streets/alleys for utility access. This may be a good source to verify taxable and nontaxable receipts within an incorporated city. This may not be in the form of a formal report; it may be simply a letter.
- **PUC Gross Receipts Assessment Report, [Form #20-106](#)** An electric utility that is responsible for Miscellaneous Gross Receipts Tax will also be responsible for the Public Utility Commission (PUC) Gross Receipts Assessment. This report is completed by public utilities, retail electric providers, and electric cooperatives within the jurisdiction of the Public Utility Commission that serve the ultimate consumer. It can be used as an audit tool, but the gross receipts subject to the PUC Assessment do not exactly match those that are taxable for the Miscellaneous Gross Receipts Tax since the PUC includes revenues that are not taxable for the Miscellaneous Gross Receipts Tax.
- **Railroad Commission Gas Utilities Division – Tax Form** This report is to be filed by all gas utility companies and lists their gross receipts quarterly.

[Railroad Commission – Gas Utility Tax Forms](#)

Types of Railroad Commission Gas Utilities Division General Annual Reports are also shown on this website.

- FERC Form 1- Annual Report of Major Electric Utilities
- FERC Form 2- Annual Report of Major Natural Gas Companies

- These are annual reports to be filed by electric and gas utility companies with the Federal Energy Regulatory Commission (FERC if the utility is required to report to the FERC. The forms contain data for a calendar year including a statement of income. An example of the form can be found at
 - Electric: <http://www.ferc.gov/docs-filing/forms.asp>
 - Gas: <http://www.ferc.gov/docs-filing/forms.asp>

Uniform System of Accounts

Most utility companies will have a chart of accounts which is set up under a specific system required or specified by a federal or state regulatory agency:

- Gas companies maintain their records in accordance with the National Association of Regulatory Utility Commissioners' System of Accounts (NARUC), or the FERC account system, with a cross-reference system between these two or their own account numbers.
- Water companies maintain their records in accordance with the National Association of Regulatory Utility Commissioners' System of Accounts (NARUC), with a cross-reference system to their own account numbers if different.

NOTE: The NARUC publishes a manual setting out the uniform system that should be available at the taxpayer's office.

- Electric companies, both interstate and intrastate, maintain their records in accordance with the uniform system of accounts adopted by the FERC, with a cross-reference to their own account numbers if different.

NOTE: The FERC publishes a manual setting out the uniform system that should be available at the taxpayer's office. Many intrastate utility companies use this manual even though not required to.

There may be utility companies not using the above described uniform systems of accounts, but this should occur infrequently.

Classifications

For the purposes of accounting and reporting under the regulations listed previously, the utilities are divided into classes as follows:

- **Gas companies**
 - Class A: Utilities having annual gas operating revenues of \$2,500,000 or more.
 - Class B: Utilities having annual gas operating revenues of \$ 1,000,000 or more but less than \$2,500,000.
 - Class C: Utilities having annual gas operating revenues of \$150,000 or more but less than \$1,000,000
 - Class D: Utilities having annual gas operating revenues of \$25,000 or more but less than \$150,000.

NOTE: A gas utility may at its option adopt a system of accounts for a larger class of utility, and a gas utility having operating revenues of less than \$25,000 may have its own system of accounts.

- **Water companies**
 - Class A: Annual operating revenues exceeding \$500,000.
 - Class B: Annual operating revenues exceeding \$250,000 but not more than \$500,000
 - Class C: Annual operating revenues exceeding \$50,000 but not more than \$250,000
 - Class D: Annual operating revenues not exceeding \$50,000.
- **Electric companies**
 - Class A: Annual operating revenues exceeding \$2,500,000.
 - Class B: Annual operating revenues exceeding \$1,000,000 but not more than \$2,500,000.
 - Class C: Annual operating revenues exceeding \$150,000 but not more than \$1,000,000.
 - Class D: Annual operating revenues not exceeding \$150,000.

Entrance Conference

Determine which services the taxpayer performs. Determine the locations of these services. Determine whether any areas serviced by the company annexed into or de-annexed by the city during the audit period. Request a chart of accounts for revenues and determine under which classification under federal guidelines the taxpayer falls.

Audit Procedures

Determine which accounts need to be examined

Request the taxpayer's chart of accounts and the publication prescribing the uniform system of accounts for the utility. From the taxpayer's account description or the description stated in the publication, determine those accounts that include taxable revenue or will affect taxable revenue.

The types of accounts to be examined may include the following, but are not limited to:

- Residential/general sales
- Commercial and industrial sales
- Sales to governmental entities (public sales)
- Sales for resale
- Forfeited discounts
- Miscellaneous/other service revenues (This account should not include any taxable revenues; however, it should be examined for verification.)
- Customer deposits (Forfeited deposits may/may not be included.)
- Bad debts

Determine all locations where the taxpayer is doing business in Texas

Request a list of the locations where the taxpayer is providing gas, electricity, or water if this information is not clearly provided in the chart of accounts. Determine whether the area is incorporated or unincorporated. Only incorporated areas are taxable for MGRT; all receipts are taxable for PUC.

Determine whether any areas were annexed into the city during the audit period, and if receipts have been reported since date of annexation.

Addresses on customer billings should not be used as absolute indicators of service locations since the billing address may be different from the service location due to rent property, farm property, etc. Meter locations should be used to determine locations of business.

Determine the population of each incorporated city

The population of each city is the population according to the most recent Federal Census as published by the U.S. Department of Commerce, Bureau of the Census. The census is published every ten (10) years. A copy of the census reports for 1990 and 2000 can be found in Appendix A. Any cities incorporated **after** the census is taken are considered unincorporated areas until the next census is taken and made official.

Testing the taxpayer's records

The taxpayer's records for Class A, Class B, Class C, and Class D utility companies will be maintained by account number using the prescribed Uniform System of Accounts or by the taxpayer's own account number which references the applicable uniform system account number. Within each account, sub-accounts may be maintained by location.

- Verify that all Texas locations are being accounted for using the chart of accounts, ledgers or whatever reliable source is obtained.
- Verify that revenue for each location is being accounted for under the correct tax bracket using the census report to verify the rate applicable to incorporated areas.

NOTE: Any time a utility company provides gas, electricity or water to a city and also the rural area outside the city limits of this city, revenue has to be accounted for separately for both areas, which should be done on an actual revenue basis. The basis for separating revenue for the correct tax bracket should be verified.

- Verify all sources of taxable revenue being reported.
- Verify the method used to arrive at nontaxable revenue within each account using account codes, subaccounts, customer billings, billing summaries or whatever source is used by the taxpayer to identify revenue sources. The taxpayer worksheets will probably show the net amount for each account, as nontaxable receipts are not required to be reported.
- Verify the method used to arrive at bad debts. The deduction for bad debts should be verified as those debts charged off per the federal income tax returns, and only the net uncollected amount applicable to reported taxable receipts should be allowed.
 - A common error for MGRT is to deduct the total of all bad debts when only a portion of the bad debts are applicable to taxable receipts. For MGRT, the bad debts should not be deducted for unincorporated areas, nor for incorporated areas of less than 1,000 population. Since the PUC includes unincorporated areas and those with a population of less than 1,000, the bad debt figure allowable for MGRT may be smaller than that allowable for the PUC.
 - The method of reporting collections of bad debts should also be verified as the bad debt account may be a net account, or collections of bad debts may be accounted for in some other manner.
- Verify account entries for accuracy. Trace a sufficient number of account entries to the source documents (customer billings, etc.) to verify that revenue is correctly being accounted for.

Audit Write-Up

PUC Gross Receipts Assessment, Tax Type 47

All audits generated in Work Manager will be under Tax Type 47. In the audit cover letter, refer to this as the “PUC Gross Receipts Assessment.” An Audit Adjustment Report for non-automated taxes must be completed.

Schedules should be prepared to fit the situation. The auditor should use judgment in determining how the adjustments can be best displayed given the particular circumstance. Always schedule adjustments as an **annual filer**, covering July 1 through June 30 of each year in which the taxpayer was in business.

Miscellaneous Gross Receipts Tax, Tax Type 23

All audits generated in Work Manager will be under Tax Type 23. In the cover letter, refer to this tax as the “Miscellaneous Gross Receipts Tax.” An Audit Adjustment Report for non-automated taxes must be completed.

Schedules should be prepared to fit the situation. The auditor should use judgment in determining how the adjustments can be best displayed given the particular circumstance. Always use the notations “**Quarter Ending**” for report periods. If the taxpayer began business during the audit period, the beginning period should be noted as “**First Report**.”

Appendix A

Federal Census Population Figures

Excel file:
[Census 2010](#)